

**ASSEMBLY BILL**

**No. 936**

**Introduced by Assembly Member Wyland**

February 18, 2005

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An act to add and repeal Article 9 (commencing with Section 12093) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 936, as introduced, Wyland. Energy resources: transportation fuels: supply.

Existing law requires the California Energy Resources Conservation and Development Commission to adopt an integrated energy policy report that contains an overview of major energy trends and issues facing the state, including supply, demand, pricing, reliability, efficiency, and impacts on public health and safety, the economy, resources, and the environment. For purposes of the report, 'energy markets and systems' includes, among other things, transportation fuels, technologies, and infrastructure.

This bill would establish, until January 1, 2010, the Office of Special Counsel on Transportation Fuels in the Office of the Governor, and the Governor's Council on Transportation Fuels Policies in state government.

The bill would require the special counsel to undertake certain duties relating to developing transportation fuels policies, promoting energy conservation, promoting competition in transportation fuel supply, and seeking adequate and diverse fuels supplies.

The bill would specify the membership of the council and would require the council to meet not less than once per month to advise the Governor, coordinate policies and funding, and perform certain other

duties, to achieve certain purposes relating to developing transportation fuels policies, promoting energy conservation, promoting competition in transportation fuel supply, and seeking adequate and diverse fuels supplies.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Article 9 (commencing with Section 12093) is added to Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 9. Transportation Fuels Security, Supply, and  
Infrastructure Development Act

12093. This article shall be known, and may be cited as, the Transportation Fuels Security, Supply, and Infrastructure Development Act of 2005.

12093.2. (a) The Legislature hereby finds and declares all of the following:

(1) California consumers of gasoline and diesel experienced record level prices in 2004, consistently exceeding the national average by twenty-five cents (\$0.25) to fifty cents (\$0.50) per gallon, and, further, are suffering from price spikes that are in response to shortages created by refinery mishaps and pipeline breakdowns. Analysts estimate that higher prices are costing California consumers in excess of one billion dollars (\$1,000,000,000) per year.

(2) The California Energy Resources Conservation and Development Commission, the Federal Trade Commission, and independent economists and analysts attribute this trend in higher California gasoline and diesel prices to a number of factors, including, but not limited to, all of the following:

(A) A primary driver of price, worldwide, is the deliberate policy of the OPEC cartel to keep prices high and to drive refiner inventories of crude oil and finished products low. The recent price for crude oil was in excess of forty-two dollars (\$42) per barrel. Refiner inventories of crude oil and fuel stocks are at an

1 all-time low, which contributes to tight product availability and  
2 flow, and leaves the system vulnerable to price spikes.

3 (B) Growth in demand for crude oil and finished  
4 transportation fuels further reinforces this price trend. China has  
5 emerged as a major economic player competing for new sources  
6 of crude oil. In California and its western fuel market (Arizona,  
7 Nevada, Oregon, and Washington), demand for gasoline and  
8 diesel is outstripping the capacity of local refiners to supply. This  
9 supply-demand gap must be filled by imports, which establishes  
10 a higher marginal cost for gasoline. Other states (Arizona and  
11 Nevada) in this western fuel market, which are served primarily  
12 by California refiners, are experiencing an even higher rate of  
13 growth in fuel consumption.

14 (C) The petroleum infrastructure for California and the  
15 western states is inadequate for handling this growing demand.  
16 The California Energy Resources Conservation and Development  
17 Commission has concluded that "...the state's facilities to import  
18 petroleum and petroleum products are at or near capacity [and]  
19 ...fuel supplies... [are] ...adversely affected by failures of  
20 intrastate product pipelines brought on by accident and  
21 deterioration." The commission is currently examining  
22 constraints on refining, imports, storage, and the pipeline system,  
23 and will look at options for expanding the infrastructure and  
24 increasing fuel supply.

25 (D) California is also facing a crisis in refining capacity. The  
26 number and diversity of refiners in this state has dropped  
27 significantly over the last 25 years. Since 1985, the number of  
28 refineries has dropped from 33 to 13, and another refinery was  
29 slated for closure in 2004, leaving only 12 refineries in operation.  
30 Refining capacity has moved from capacity growth keeping pace  
31 with demand to a condition of shortfall in meeting growing  
32 demand. Analysts estimate that demand growth is annually six to  
33 eight times greater than capacity expansion. It was estimated that  
34 imports would fill a supply gap of 3 billion gallons in 2004. The  
35 supply gap will increase to 5 billion gallons by 2014. Efforts to  
36 expand capacity at existing refineries have met with regulatory  
37 barriers, permit delays, and multijurisdictional overlap, and no  
38 new refinery has been built since 1969.

39 (E) The California imbalance in supply-demand is further  
40 compounded by neighboring state draw-down of 350 thousand

1 gallons per day of California refined gasoline, diesel, and jet fuel.  
2 These states have no refining capacity and California is a major  
3 supplier of their transportation fuels and provides Nevada with  
4 100 percent of its transportation fuels, Arizona with 61 percent of  
5 its transportation fuel, and Oregon with 37 percent of its  
6 transportation fuel. Arizona also imports significant volumes of  
7 fuel from Gulf Coast refineries through the Kinder  
8 Morgan-Longhorn Pipeline to El Paso. However, the pipeline is  
9 undersized and has suffered serious ruptures recently, leading to  
10 additional demands on an already overloaded Los Angeles  
11 refining system. There are local fears that consumers in San  
12 Diego could face similar threats because of their total  
13 dependency on the Kinder Morgan pipeline from Los Angeles  
14 refineries. Plans are underway to expand and improve the  
15 Longhorn pipeline, adding another 100,000 barrels per day in  
16 Gulf Coast supply, or the equivalent of adding a new refinery to  
17 the system. Upgrading this pipeline in Arizona would bring  
18 immediate relief to constrained California refining capacity.  
19 California should work with its neighboring states in making it a  
20 priority to bring this new supply into the system as well as  
21 evaluate similar threats and opportunities in the California  
22 infrastructure.

23 (F) While providing significant gains in air quality,  
24 reformulated fuel specifications, such as California's Cleaner  
25 Burning Gasoline (CBG), have also contributed to higher refiner  
26 costs and to a sharp reduction in the number of refiners that can  
27 make the fuel. The result is market fragmentation and a more  
28 inefficient fuel delivery system. The problem is further  
29 compounded by proliferation of unique fuel specifications in  
30 other states. The ethanol and oxygenate mandate by the  
31 Environmental Protection Agency further adds to these costs and  
32 injects rigidity into the distribution system.

33 (G) There are continued concerns about the dominance of  
34 major refiners in the distribution and marketing of transportation  
35 fuels. Most experts agree that more robust competition and  
36 related price benefits will occur with the entrance a greater  
37 number of suppliers in transportation fuels distribution and  
38 marketing. Pre-merger policies of the Attorney General and the  
39 federal Department of Justice and the Federal Trade Commission  
40 brought some relief in this direction by requiring divestitures by

1 major refiners in refining, distribution, and marketing, and  
2 creating new opportunities for entry of independent refiners and  
3 marketers.

4 (H) Studies conducted by the California Energy Resources  
5 Conservation and Development Commission on market power  
6 and competition in the California fuels markets have cited the  
7 inability of independent jobbers and traders to access port,  
8 terminal, pipeline, and storage facilities throughout the system as  
9 a significant, potential barrier to competition in transportation  
10 fuels markets. It is pointed out that 80 to 90 percent of storage is  
11 controlled by major refiners through their investments in refining  
12 and fuel delivery systems. Relief will probably come through  
13 expanded public and common facilities, to allow greater  
14 opportunity for independent participation in product import and  
15 movement. It will require state leadership in removing barriers to  
16 expansion of refining, storage, and terminal capacity that are the  
17 result of rulemaking and permit requirements of regulatory  
18 agencies, local government, and ports.

19 (b) Accordingly, the Legislature hereby finds and declares all  
20 of the following:

21 (1) The current emergency in transportation fuels, created by  
22 escalating prices, growing demand, inadequate refining capacity,  
23 and a deteriorating petroleum infrastructure, calls for stronger  
24 state leadership to assure a competitive and stable economy,  
25 affordable transportation, and continued strength in international  
26 trade.

27 (2) The state should conduct a comprehensive review of state,  
28 federal, and local policies that are contributing to this complex  
29 problem, develop options and reforms needed to reconcile  
30 conflicts, and prepare a strategy and plan that restores integrity to  
31 the petroleum infrastructure. It is important that the Governor  
32 lead this initiative in a manner that promotes competition,  
33 diversity of supply, and self-sufficiency in transportation fuels.

34 12093.4. The office of Special Counsel on Transportation  
35 Fuels is hereby established in the Office of the Governor. The  
36 special counsel shall do all of the following:

37 (a) Serve as the Governor's personal representative in  
38 negotiations with the federal government, neighboring states, and  
39 other parties in coordinating transportation fuels policies and

1 energy conservation, promoting competition, and seeking an  
2 adequate and diverse supply.

3 (b) In consultation with appropriate state agencies, take the  
4 lead in the design and implementation of state policies that  
5 achieve the goals of competition, diversity, and sufficiency in  
6 transportation fuels.

7 (c) With technical support from, and consultation with, the  
8 California Energy Resources Conservation and Development  
9 Commission, prepare a list of priority petroleum infrastructure  
10 projects, monitor progress and deadlines, and engage agencies on  
11 behalf of applicants.

12 (d) Provide liaison and support to state, local, and federal  
13 agencies responsible for homeland security, and assure there are  
14 integrated security plans and response protocols for protecting  
15 refining centers, terminals, storage, pipeline, and port facilities.

16 (e) Organize and host, at least annually, a Western States  
17 Conference on Transportation Fuels Policies to assess trends and  
18 needs in the western states petroleum infrastructure, coordinate  
19 fuels policies, identify priority infrastructure projects for funding  
20 support, and rationalize fuel specifications in the western states  
21 fuels marketing region.

22 (f) Enforce provisions of the Permit Streamlining Act (Chapter  
23 4.5 (commencing with Section 65920) of Division 1 of Title 7),  
24 to expedite priority energy projects and engage state, federal, and  
25 local agencies on rulemaking and permitting affecting the  
26 viability and timing of priority projects.

27 (g) Fund and oversee studies and technical evaluations in  
28 support of this article.

29 (h) Staff and chair the Governor's Council on Transportation  
30 Fuels Policies established under Section 12093.6.

31 12093.6. (a) The Governor's Council on Transportation Fuels  
32 Policies is hereby established in state government.

33 (b) The council shall have the following members:

34 (1) The Secretary of Business, Transportation and Housing.

35 (2) The Secretary of Resources.

36 (3) The Secretary for Environmental Protection.

37 (4) The Chairperson of the California Energy Resources  
38 Conservation and Development Commission.

39 (5) The President of the California Public Utilities  
40 Commission.

1 (c) The council shall meet not less than once per month.

2 (d) Under the leadership of the Governor's special counsel on  
3 transportation fuels, the council shall advise the Governor and  
4 coordinate policies and funding to achieve the purposes of this  
5 article, including, but not limited to, all of the following:

6 (1) Encouraging investment and arranging financial assistance  
7 through the California Infrastructure and Economic Development  
8 Bank, private sources, and community development funds on  
9 behalf of petroleum infrastructure projects that are integral to the  
10 fuel supply system and will enhance refinery capacity and  
11 support facilities for the flow of transportation fuels throughout  
12 California marketing regions and neighboring states.

13 (2) Promoting policies that provide better interstate  
14 coordination and cooperation, including, but not limited to, all of  
15 the following:

16 (A) Implementing priority infrastructure projects that are  
17 important to the region.

18 (B) Rationalizing the fuel specifications of the western states  
19 in a manner that maintains standards of air quality and promotes  
20 efficiency in the transportation fuel delivery system.

21 (C) Encouraging the development of new, diverse, and  
22 competitive sources of transportation fuels.

23 (3) Assuring access to, and promoting competition among,  
24 new and independent suppliers of transportation fuels throughout  
25 the petroleum infrastructure, including, but not limited to, public  
26 and private port, terminal, storage, and pipeline facilities.

27 (4) Providing an annual assessment on the state's petroleum  
28 infrastructure's diversity, competitiveness, and adequacy.

29 (e) The council shall recommend legislation and budget  
30 appropriations for implementing the goals of this article.

31 12093.8. This article shall remain in effect only until January  
32 1, 2010, and as of that date is repealed, unless a later enacted  
33 statute that is enacted before January 1, 2010, deletes or extends  
34 that date.

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